LEASE AGREEMENT (1944 N. Winery Avenue - Reedy Park)

This Lease Agreement ("Lease") is made and entered into as of the 26th day of May, 2011 by and between the City of Fresno, a California municipal corporation ("City"), and The Discovery Center, a California nonprofit corporation ("Tenant").

RECITALS

WHEREAS, City owns improved property located at 1944, 1936 and 1750 N. Winery Avenue in Fresno, California, Assessor's Parcel Number 494-291-07T, more particularly described on **Exhibit A** attached hereto (the real property and improvements collectively referred to herein as the "Property") which is known as "Reedy Park" and previously leased the Property to Tenant (formerly known as "Fresno Museum, Inc.") in July of 1961 for use as a natural history and physical science museum; and

WHEREAS, City and Tenant entered into a new twenty-year lease of the Property, dated August 20, 1991 (and as amended by Amendment No. 1, dated January 11, 1994), for use as an educational institution of natural and physical sciences and a botanical park (the "1991 Lease"); and

WHEREAS, the 1991 Lease is due to expire on August 31, 2011, subject to Tenant's option to extend the lease for one successive ten-year period; and

WHEREAS, the parties now desire to rescind the 1991 Lease and to enter into a new lease agreement on the terms and conditions as contained in this Lease; and

WHEREAS, the Tenant and the University of California Cooperative Extension, Fresno County ("UCCE") previously entered into an agreement for UCCE's use of the south end of the Property to maintain a demonstration garden known as the "Garden of the Sun" (shown on **Exhibit B**) through its Master Gardener Program; and

WHEREAS, such agreement was terminated, but UCCE has continued operating the Garden of the Sun; and

WHEREAS, the parties agree that the portion of the Property operated by UCCE as the Garden of the Sun is relinquished by Tenant to City and UCCE may continue operating the Garden of the Sun, provided City and UCCE enter into a separate lease of the Garden of the Sun; and

WHEREAS, the balance of the Property will be leased hereunder by Tenant and shall be known as the "Leased Premises," as more particularly described in **Exhibit A-1**; and

WHEREAS, the parties agree that Tenant shall continue to be responsible for the maintenance and repair of the existing improvements on the Leased Premises including, without limitation, the winery building (the "Winery") (shown on **Exhibit B**), the "Deutsch Cactus Garden" (shown on **Exhibit B**), and the exhibit hall building (the "Johnson Exhibit Hall") (shown on **Exhibit B**); and

WHEREAS, Tenant desires to improve the Leased Premises for its use by

reconstructing or repairing the old museum building (the "Old Museum") (shown on **Exhibit B**);" and

WHEREAS, the facilities and the services offered by Tenant have proven to be of great benefit to the citizens of the City of Fresno and its environs, through the education of children and adults; and

WHEREAS, the Deutsch Cactus Garden is maintained by Tenant through assets held in trust under the "Deutsch Park and Botanical Gardens Charitable Trust," dated September 15, 1995 (the "Trust"), for the "care, preservation and maintenance of the display of cacti, related plants, Native American Indian artifacts and related memorabilia at the Discovery Center, 1944 North Winery, Fresno, California;" and

WHEREAS, pursuant to the terms of the Trust, no request by Tenant for distribution of any principal shall be honored by the trustee unless the trustee gives City at least 15 days prior written notice of the details of such request; and

WHEREAS, Tenant will continue to maintain the Deutsch Cactus Garden for the benefit of the Leased Premises in accordance with this Lease; and

WHEREAS, the parties agree that maintaining and making available the "green space" (as shown on **Exhibit B**) on the Leased Premises for the public's use is in the best interest of the community and Tenant agrees to maintain and make such green space available in accordance with the terms and conditions of this Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, and of the covenants, conditions, and promises hereinafter contained, to be kept and performed by the respective parties agree as follows:

1. TENANT WARRANTIES AND LEASE OF PROPERTY

- (a) Tenant represents and warrants that the improvements shown on **Exhibit B** (also including those improvements not shown thereon such as lamp posts, flag pole and benches) remain on the Property in good repair and condition upon the Effective Date, except the Old Museum, taking into account the age, condition, and customary use of the respective improvement.
- (b) Tenant represents and warrants that all additions, alterations and improvements made to the Property by Tenant prior to the Effective Date are free and clear of any and all liens, claims, demands or other encumbrances.
- (c) City hereby leases to Tenant and Tenant hereby hires from City the Leased Premises, subject to the terms, covenants and conditions hereinafter set forth.
- (d) Tenant hereby acknowledges the title of City, in and to the Property and the improvements located thereon now or in the future, and covenants and agrees never to assail, contest, or resist said title.

- (e) Tenant agrees to indemnify and hold City free and harmless from any losses, damages, costs or expenses (including attorney fees) resulting from any inaccuracy in or breach of any representation or warranty of Tenant and any breach or default by Tenant under any of Tenant's covenants or agreement under this Lease.
- (f) Subsections (a), (b), (d), (e) and (f) of this Section 1 shall survive expiration or termination of this Lease.
- 2. **CONDITION OF THE LEASED PREMISES.** Tenant acknowledges that it has been in possession of the Leased Premises for approximately 50 years. Tenant accepts the Leased Premises "as is," in its existing physical condition, without warranty by City or any duty or obligation on the part of City to maintain the Leased Premises, except as expressly set forth in this Lease. Tenant acknowledges that one or more of the following (collectively, "Potential Environmental Hazards") may be located in, on or underlying the Leased Premises:
- (a) Hazardous Substances (as hereinafter defined). For purposes hereof, the term "Hazardous Substances" means any hazardous or toxic material or waste which is or becomes regulated by Legal Requirements, as defined herein, relating to the protection of human health or the environment, including, but not limited to, laws, requirements and regulations pertaining to reporting, licensing, permitting, investigating and remediating emissions, discharges, releases or threatened releases of such substances into the air, surface water, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of such substances. Without limiting the generality of the foregoing, the term Hazardous Substances includes any material or substance:
- now or hereafter defined as a "hazardous substance," "hazardous (1)waste," "hazardous material," "extremely hazardous waste," "restricted hazardous waste" or "toxic substance" or words of similar import under any applicable local, state or federal law or under the regulations adopted or promulgated pursuant thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§6901 et seq.; the Clean Air Act, 42 U.S.C. §§7401 et seq.; the Clean Water Act, 33 U.S.C. §§1251 et seg.; the Toxic Substance Control Act, 15 U.S.C. §§2601 et seg.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§136 et seq.; the Atomic Energy Act of 1954, 42 U.S.C. §§2014 et seq.; the Nuclear Waste Policy Act of 1982, 42 U.S.C. §§10101 et seq.; the Pesticide Contamination Prevention Act, Sections 13145-13152 of the California Food and Agricultural Code; Divisions 6, 7 and 13 of the California Food and Agricultural Code, and Title 3, Division 6 of the California Code of Regulations related to pesticides; the California Hazardous Waste Control Law, Cal. Health and Safety Code §§25100 et seq.; the Porter-Cologne Water Quality Control Act, Cal. Water Code §§13000 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code §§25300 et seq.); and the Medical Waste Management Act (Health and Safety Code §§25015 et seg.); or
- (2) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, and is now or hereafter regulated as a Hazardous Substance by the United States, the State of California, any local governmental authority or any political subdivision thereof; or

- (3) the presence of which on the Leased Premises poses or threatens to pose a hazard to the health or safety of persons on or about the Leased Premises or to the environment; or
 - (4) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or
- (5) which contains lead-based paint or other lead contamination, polychlorinated biphenyls ("PCBs") or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or
 - (6) which contains radon gas:
- (b) fuel or chemical storage tanks, energized electrical conductors or equipment, or natural gas transmission or distribution pipelines; and
 - (c) other potentially hazardous substances, materials, products or conditions.

Tenant shall take reasonable precautions to protect Tenant's representatives from risks of harm from Potential Environmental Hazards. Tenant acknowledges that it has previously evaluated the condition of the Leased Premises and all matters affecting the suitability of the Leased Premises for the uses permitted by this Lease, including, but not limited to, the Potential Environmental Hazards listed herein. City shall not be responsible for any losses, liability or costs (including, but not limited to, consulting, engineering, clean-up and disposal costs, and legal costs) arising in whole or in part from any form of toxic material or hazardous substance that is existing on the Leased Premises prior to or after Tenant's taking possession of the Leased Premises. Tenant shall be solely responsible for any losses, liability or costs (including, but not limited to, consulting, engineering, clean-up and disposal costs, and legal costs) arising in whole or in part from any form of toxic material or hazardous substance on the Property arising from or to the extent exacerbated by activities of Tenant or any of Tenant's representatives (including, without limitation, any of Tenant's subtenants, consultants, subconsultants, contractors, subcontractors, employees, officers, trustees, invitees, volunteers or agents) on the Property during Tenant's prior occupancy of the Property or on the Leased Premises during the term of this Lease and any extension, and such responsibility shall survive expiration or termination of this Lease.

- 3. **TERM.** This Lease shall be for an initial term of 5 years commencing on May 26, 2011 ("Effective Date") and ending at 11:59:59 p.m. on the 5th anniversary of the Effective Date ("Initial Term"), unless earlier terminated or extended in accordance with the provisions of this Lease.
- (a) In the event that Tenant completes the reconstruction and repair of the Old Museum on or before the expiration of the Initial Term in accordance with Section 10 below, the Initial Term of this Lease will be automatically extended for one 40-year period on the same terms and conditions of this Lease except for this provision for an automatic extension. In the event that the Initial Term of this Lease is extended for the 40-year period, the term of this Lease will end at 11:59:59 p.m. on the 45th anniversary of the Effective Date.
- (b) Upon the expiration or earlier termination of this Lease, at Tenant's sole cost and expense, Tenant shall remove all of Tenant's personal property and all debris and waste material resulting from Tenant's activities. Except for ordinary wear and tear and any

improvements made to the Leased Premises by City or Tenant pursuant to this Lease, Tenant shall repair and restore the Leased Premises to the condition that existed prior to the Effective Date. Tenant shall repair and restore each improvement made to the Leased Premises pursuant to this Lease to the condition that existed at the time of completion of the respective improvement, ordinary wear and tear excepted. Tenant shall bear the entire cost of such removal, repair and restoration, and City shall bear no liability for any costs caused or related to any expiration or termination of this Lease. In the event Tenant fails to comply with the requirements of this section, City may elect to remove such personal property and effect such removal, repair or restoration as necessary and recover such costs and expenses therefore from Tenant. Tenant shall pay such costs and expenses within 10 days of receipt of an invoice therefore. Tenant's obligations under this section shall survive the expiration or termination of this Lease.

4. RENT AND GRANT ASSISTANCE.

- (a) Rent for the term of this Lease will be \$50 per year payable by Tenant, in advance, to City at the address on the signature page beginning on the Effective Date and annually thereafter on or before the anniversary date of this Lease.
- (b) For purposes of this Lease, the parties agree that the value of Tenant's annual maintenance and utilities for various structures and the public green space hereunder for the Leased Premises is, at a minimum, \$5,500.
- (c) Tenant shall actively seek grants for the continuation of Tenant programs on the Leased Premises. City will cooperate with Tenant in its pursuit of such grants.
- (d) Tenant will further cooperate with City in its pursuit of any grants for the improvement of the Leased Premises. Tenant shall assist City with any grant activities by identifying grant opportunities, gathering information and assisting with the writing of any grant application.

5. OPERATION, MAINTENANCE AND SECURITY DURING TERM OF LEASE.

- (a) City will not be obligated to provide security, maintenance or make any repairs to the Leased Premises or any improvement thereon. Tenant covenants and agrees to keep the Leased Premises clean and free from debris and trash during the term of the Lease and any extension, and be responsible for any maintenance or repair to the improvements and landscaping on the Leased Premises (including, without limitation, the Deutsch Cactus Garden). Notwithstanding the forgoing or Section 11(d)(2) of this Lease, Tenant shall have no obligation to maintain or repair any future improvement constructed by City pursuant to Section 9, below, that does not directly facilitate Tenant's use of the Leased Premises as described in this Lease; provided, however, that any damage or destruction to such improvement causing the need for such repair was not caused by Tenant, or any of its subtenants, consultants, subconsultants, contractors, subcontractors, employees, officers, trustees, invitees, volunteers or agents.
- (b) Tenant covenants and agrees to operate and maintain the Leased Premises at least in accordance with the current City standards attached hereto as **Exhibit C**. In the event such minimum City standards are inconsistent with any terms and conditions herein related to

the operation and maintenance of the Leased Premises, then the City standards shall control and take precedence over the terms and conditions of this Lease.

- (c) Tenant shall maintain and repair the Leased Premises, improvements and landscaping in a timely manner. Tenant shall bear the entire cost of such maintenance and repair, and City shall bear no liability for any costs caused or related to any termination of this Lease. In the event Tenant fails to comply with the requirements of this section, City may elect to effect such maintenance or repair as necessary and recover such costs and expenses therefore from Tenant. Tenant shall pay such costs and expenses within 10 days of receipt of an invoice therefore. Tenant's obligations under this section shall survive the expiration or termination of this Lease.
- (d) Tenant covenants and agrees to provide any onsite security (limited to alarm system on each structure, locked gates, and added security for events held as reasonably necessary based upon the nature of the event, whether alcoholic beverages will be served, the number of persons attending and the timing of such events) to City's reasonable satisfaction and to ensure that City's property and operations are not adversely affected by Tenant's use of the Leased Premises. Tenant covenants and agrees to limit the drinking of alcoholic beverages on the Leased Premises in accordance with Legal Requirements (as defined herein) and agrees to diligently enforce such limitation. In addition, Tenant agrees that no firearms shall be permitted on the Leased Premises (this is not intended to include firearms that are either non-functional and part of educational exhibits, or are in possession of law enforcement officers). Tenant shall prohibit any person from using the Leased Premises for any use other than the use set forth in Section 6 of this Lease.

6. **USE OF LEASED PREMISES.**

- (a) Upon the Effective Date, Tenant may use the Leased Premises for maintaining and operating thereon (i) a nonprofit public educational facility in natural and physical sciences, museum and botanical park, (ii) renting out facilities on the Leased Premises to the public for events, and (iii) a public park with "passive green space" where the public can picnic and enjoy the amenities located on the Leased Premises.
- (b) Tenant shall ensure that the educational facility, museum, botanical park, and green space remains open to the public (without charge of any mandatory entrance fee for use of the green space) during Tenant's normal operating hours. Tenant will provide City its anticipated operating hours and schedule for the year at the beginning of each calendar year. City shall have the right, but not the obligation, to advertise the operating hours and schedule provided by Tenant.
- (c) Tenant shall be responsible for programming and arranging for exhibits, lectures, classes and other activities related to the operation of the facility and park. Tenant shall maintain the "green space" on the Leased Premises for "passive use" by the general public without charge. For purposes of this Lease, "passive use" shall include picnicking and activities associated therewith, and the use of restroom facilities on the Leased Premises.
- (d) Tenant shall prepare a written programmatic report, annually, in substantially the form attached hereto as **Exhibit D**, of its activities in connection with the Tenant's operation of the Leased Premises, and such written report shall be submitted to City on or before November 1 following each year of this Lease, along with Tenant's current

IRS Form 990. This paragraph shall survive expiration or termination of this Lease.

7. **UTILITIES.** Tenant will pay for all internet, water, sewer, garbage, electricity, natural gas, telephone and other utilities for the Leased Premises during the term of the Lease and any extension. All accounts will be maintained on a current basis and paid before their delinquency. Utilities for the Leased Premises shall be separately metered from that of the Garden of the Sun.

8. PROPERTY TAXES AND INSURANCE.

- (a) Tenant acknowledges that any possessory property interest arising by entering into this Lease may be subject to property taxation and that Tenant shall pay any property taxes levied on such interest. NOTIFICATION TO TENANT PURSUANT TO CALIFORNIA REVENUE AND TAXATION CODE SECTION 107.6: A POSSESSORY INTEREST SUBJECT TO PROPERTY TAXATION MAY BE CREATED BY ENTERING INTO THIS LEASE AND TENANT MAY BE SUBJECT TO THE PAYMENT OF PROPERTY TAXES LEVIED ON SUCH INTEREST.
- (b) Throughout the life of this Lease, Tenant and each of its subtenants, consultants, subconsultants, contractors and subcontractors shall pay for and maintain in full force and effect all insurance as required in attached **Exhibit E** (and as may be required under Section 10 and **Exhibit F** of this Lease for any such consultants, subconsultants, contractors and subcontractors) or as may be authorized or required in writing by City's Risk Manager or his/her designee at any time and in his/her reasonable and sole discretion. Tenant and any subtenant of a facility on the Leased Premises, shall ensure that there is sufficient insurance coverage for the respective event activities whenever such facility is rented out to the public for an event. Tenant and each of its subtenants, consultants, subconsultants, contractors and subcontractors shall ensure that there is sufficient insurance coverage for any work performed by their respective volunteers.
- (c) If at any time during the life of the Lease or any extension, Tenant or any of its subtenants, consultants, subconsultants, contractors or subcontractors fail to maintain any required insurance in full force and effect, all Tenant's activities under this Lease shall be discontinued immediately, until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Lease. No action taken by City pursuant to this section shall in any way relieve Tenant of its responsibilities under this Lease.
- (d) The fact that insurance is obtained by Tenant shall not be deemed to release or diminish the liability of Tenant, including, without limitation, liability under the indemnity provisions of this Lease. The duty to indemnify Indemnitees (as defined in this Lease) shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Tenant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Tenant, or its subtenants, consultants, subconsultants, contractors or subcontractors.
- (e) Upon request of City, Tenant shall immediately furnish City with a complete copy of any insurance policy required under this Lease, including all endorsements, with said

copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Lease.

- (f) Tenant and its insurers hereby waive all rights of recovery against City and its officers, officials, employees, agents, invitees and volunteers, on account of injury, loss by or damage to the Tenant or any of its officers, employees, trustees, agents, subtenants, consultants, subconsultants, contractors, subcontractors, invitees or volunteers, or its property or the property of others under its care, custody and control. Tenant shall give notice to its insurers that this waiver of subrogation is contained in this Lease. This requirement shall survive termination or expiration of this Lease.
- (g) Tenant is also responsible for the compliance of Tenant's subtenants, consultants, subconsultants, contractors and subcontractors with the insurance requirements in Subsections (b), (c), (d), (e), (f) and (g) of this section (and as may be made applicable under Section 10 of this Lease for such consultants, subconsultants, contractors and subcontractors), except that any required certificates and applicable endorsements shall be on file with Tenant and City prior to the commencement of any subtenancy, work or services by the respective subtenant, consultant, subconsultant, contractor or subcontractor.
- 9. CITY IMPROVEMENTS OR SERVICE. City may, but is not obligated to, make any future improvements to the Leased Premises pursuant to Section 12(b) of this Lease. City's obligation to perform any service obligation or make any payment under this Lease, including, without limitation, a decision to make any improvements to the Leased Premises at its cost or expense, shall be contingent upon the appropriation of funds by City's governing body sufficient to provide such services or payment during City's respective fiscal year (July 1 through June 30). The performance of service or payment obligations shall be funded only from current funds, budgeted and appropriated, on deposit in a reserve fund, or otherwise legally available for funding such services or other Leased Premises costs. This Lease shall not create an immediate debt for funding all service obligations throughout the Term of the Lease, and is not a pledge of City's full faith and credit. During its annual budgeting process, City shall consider, and will use best efforts to appropriate funding to meet its construction, and other estimated costs under this Lease for the fiscal year under consideration.

10. TENANT IMPROVEMENTS.

(a) Except to maintain and repair the improvements on the Leased Premises (including, without limitation, the reconstruction and repair of the Old Museum) and for improvements made to the Leased Premises costing no greater than \$10,000 for which. Tenant has given City prior written notice, Tenant shall have no right to improve, add to, or alter the Leased Premises without the prior written consent of City which shall not be unreasonably withheld. City shall not be obligated or required to make, provide, construct or install any improvements to any portion of the Leased Premises. The "\$10,000" amount above is inclusive of the value of any in-kind, or donations of, monies, labor or materials. For purposes of this Lease, any repair or improvement of \$10,000 or less shall be herein referred to as a "Minor Repair or Improvement." In the event that the Initial Term is extended in accordance with Section 3(a) of this Lease, the "\$10,000" amount shall be increased or decreased every 5 years following the Effective Date of this Lease (the "Base Date") beginning with the 5th anniversary of the Effective Date (the first "Adjustment Date"), by the percentage change in the Consumer Price Index (Urban Consumers—West Urban) since the

immediately preceding Base Date or Adjustment Date, respectively.

- (b) Subject to the terms and conditions of the Settlement and General Release Agreement described in Section 26 below, Tenant shall reconstruct and repair the Old Museum in accordance with the provisions herein. During any such reconstruction and repair, Tenant may place standard temporary trailers on the Leased Premises for use as office space during construction. The parties shall develop a mutually acceptable timeline for the construction project.
- (c) Tenant will notify City at least 7 days prior to the commencement of any construction. City shall have the right to post and keep posted on the Leased Premises, and record, a Notice of Non-responsibility. Tenant shall keep the Leased Premises free from any and all liens and encumbrances arising out of or in any way connected with the work performed, materials furnished or obligations incurred by Tenant in connection with any alteration, addition or improvement of the Leased Premises.
- Other than for a Minor Repair or Improvement, Tenant shall prepare a work plan and cost estimate which describes in detail and with specificity the nature, scope, location, estimated costs and purpose of all of Tenant's improvements and activities to be performed on the Leased Premises, including, without limitation, the specific areas in which Tenant and Tenant's representatives, may have access and may conduct Tenant's activities and a schedule of Tenant's activities (the "Work Plan"). The Work Plan will be submitted to the following person at City for preliminary approval: Director of Fresno Department of Parks, Recreation and Community Services, 2326 Fresno Street, Fresno, CA 93721-1824, Phone No. (559) 621-2900. Tenant acknowledges and agrees that City's review of the Work Plan is solely for the purpose of protecting City's interests, and shall not be deemed to create any liability of any kind on the part of City, or to constitute a representation on the part of City that the Work Plan is adequate or appropriate for any purpose, or complies with applicable Legal Requirements, as defined herein. Tenant and Tenant's representatives shall not commence activities associated with the Tenant's improvements on the Leased Premises without the prior written consent of City to the Work Plan as set forth above, which consent shall not be unreasonably withheld. Tenant agrees and covenants that all of Tenant's activities shall be performed in strict compliance to the approved Work Plan. Tenant shall not modify the Work Plan without the prior written approval of City.
- (e) City reserves the right to restrict access to the Leased Premises in the event of fire, earthquake, storm, riot, civil disturbance, or other casualty or emergency, or in connection with City's response thereto, or if emergency repairs or maintenance are required to City facilities within or in the vicinity of the Leased Premises, or otherwise when City deems it advisable to do so.
- (f) Tenant covenants and agrees that Tenant shall conduct Tenant's activities in compliance with the Work Plan approved by City and in such a manner so as to protect the Leased Premises, City's facilities, the environment and human health and safety. Except as may be expressly provided in such Work Plan, Tenant shall not cause or permit any Hazardous Substances, as defined herein, to be brought upon, produced, stored, used, discharged or disposed of on, or in the vicinity of, the Leased Premises. In the event City determines that Tenant's activities in any way endanger the Leased Premises, City's facilities, the environment, or human health and safety, City may, at City's sole discretion, require that Tenant halt Tenant's activities until appropriate protective measures may be

taken to eliminate such endangerment to City's satisfaction. Tenant shall hold City harmless from any claims in any way resulting from any delay under this section. City's right to halt activities under this section shall not in any way affect or alter Tenant's insurance or indemnity obligations under this Lease, nor shall it relieve Tenant from any of Tenant's obligations hereunder that pertain to health, safety, or the protection of the environment.

- (g) Tenant shall comply, at Tenant's sole cost and expense, with all applicable Legal Requirements when conducting Tenant's activities and Tenant shall obtain, at Tenant's sole cost and expense any and all necessary permits, authorizations and approvals applicable to Tenant's activities. City shall have a right to observe Tenant's activities at any time to confirm Tenant's compliance with the requirements of this Lease and applicable laws.
- (h) Certain planning, land use, zoning and other permits and public actions required in connection with any Tenant improvement project, without limitation, the approval of this Lease, the environmental review and analysis under the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA) or any other statute, and other transactions contemplated by this Lease are discretionary government actions. Nothing in this Lease obligates City or any other governmental entity to grant final approval of any matter described herein. Such actions are legislative, quasi-judicial, or otherwise discretionary in nature. City cannot take action with respect to such matters before completing the environmental assessment of the respective project under CEQA, NEPA and any other applicable statutes. City cannot and does not commit in advance that it will give final approval to any matter. City shall not be liable, in law or equity, to Tenant or any of its executors, administrators, transferees, successors-in-interest or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval.
- (i) Any consent by City under Subsection (a) or (d) above shall be provided Tenant within 30 days of receipt by City of Tenant's written request for such consent.
- (j) Tenant shall require that any repair or improvement be constructed by a licensed and bonded contractor.
- (k) Tenant shall include in any contract by Tenant for the design, construction, renovation, demolition or repair of any improvement on the Leased Premises the requirements in **Exhibit F** (except as noted thereon for any Minor Repair or Improvement). Tenant agrees that no change order to any such contract (other than a contract for a Minor Repair or Improvement) will be issued without the prior written approval from the City which affects the Work Plan for the project, would affect the size or capacity of any project component, cause a significant change in the location of any project component, affect the duration of the project, alter materials used in the project, or affects any City-approved green or solar energy system component(s) of the project. Tenant also agrees to make City a third-party beneficiary in any such contract (other than a contract for a Minor Repair or Improvement).
- (I) Ownership of all structures, buildings, or improvements constructed by Tenant upon the Leased Premises and all alterations, additions, or betterments thereto, shall vest in City, without compensation being paid therefore.

11. CONDEMNATION; DAMAGE OR DESTRUCTION.

(a) Total Condemnation. Should, during the term of this Lease, title and

possession of all of the Leased Premises be taken under the power of eminent domain by any public or quasi-public agency or entity, this Lease shall terminate as of 12:01 a.m. of, whichever first occurs, the date legal title of said Leased Premises becomes vested in or actual physical possession of said Leased Premises is taken by the agency or entity exercising the power of eminent domain and both City and Tenant shall thereafter be released from all obligations under this Lease.

(b) Partial Condemnation.

- (1) If a portion of the Leased Premises is taken under the power of eminent domain and such taking materially affects Tenant's ability to utilize the Leased Premises, Tenant shall have the right to terminate this Lease as of 12:01 a.m. of, whichever first occurs, the date legal title of said Leased Premises becomes vested in or actual physical possession of said Leased Premises is taken by the agency or entity exercising the power of eminent domain, by giving written notice to City within 60 Days after Tenant's receipt of notice of the partial condemnation.
- (2) If a portion of the Leased Premises is taken under the power of eminent domain and Tenant does not terminate this Lease pursuant to the terms and conditions of the preceding paragraph, then (i) this Lease shall be deemed terminated with respect to only the condemned portion of the Leased Premises; and (ii) the rent payable hereunder shall be equitably reduced, as determined by the parties in good faith.

(c) Condemnation Award.

- (1) Except as provided in Section 11(c)(2), below, in any eminent domain proceeding commenced by any public or quasi-public agency or entity, any compensation or damages awarded or payable because of the taking of any land, improvements or leasehold interest of the Leased Premises by eminent domain shall be paid to and be the sole property of City free and clear of any claim of Tenant or any person claiming rights to the Leased Premises through or under Tenant.
- (2) In the event that the Initial Term of this Lease is extended in accordance with Section 3, above, in any eminent domain proceeding commenced by any public or quasi-public agency or entity during the 40-year extension period of this Lease, a proportionate amount of compensation or damages awarded or payable because of the taking of the leasehold interest in the Old Museum (reconstructed and repaired by Tenant in accordance with Section 10 of this Lease) by eminent domain shall be paid to and be the sole property of Tenant. Such proportionate amount shall be determined based upon the following formula:
 - (i) For purposes of the formula the following definitions shall apply:
 - "Sale Proceeds" shall mean the sales price (net of any commissions and other reasonable sale expenses) received by City and Tenant for the sale of the City and Tenant's adjacent improved real property across N. Winery Avenue at 1937 N. Winery Avenue, more particularly described in the Settlement and General Release

- Agreement which is the subject of the condition precedent in Section 26, below.
- "Old Museum Value" shall mean the total cost (inclusive of the value of any in-kind, or donations of, monies, labor or materials) of Tenant's reconstruction and repair of the Old Museum in accordance with Section 10 of this Lease.
- (ii) The proportionate amount shall be the equivalent of one-fortieth of the Old Museum Value for each full year then remaining on the term of this Lease minus the Sale Proceeds (if the amount of the Sales Proceeds exceeds the dollar amount of such "one-fortieth of the Old Museum Value for each full year then remaining on the term of this Lease," then the resulting dollar amount shall be zero). E.g., if the Old Museum Value is \$500,000, the Sales Proceeds is \$100,000, and 20 years is remaining on the term of the Lease; then 20-fortieths of \$500,000 is \$250,000 and minus \$100,000 is \$150,000 (the proportionate amount).
- (d) Damage or Destruction. In the event of damage or destruction to any improvement that is part of the Leased Premises during this Lease, Tenant shall immediately notify City in writing thereof.
 - (1) If such damage or destruction is caused by the negligence or willful misconduct of Tenant or any of its employees, officers, trustees, agents, subtenants, consultants, subconsultants, contractors, subcontractors, volunteers or invitees, then Tenant shall repair, replace or rebuild the improvement within 120 days after such damage or destruction, and in such manner and according to such plans and specifications which would restore the Leased Premises, to substantially the same condition as immediately before its destruction or damage. Tenant waives any right to terminate the Lease under this Section 11(d) or California Civil Code sections 1932(2) or 1933(4). This paragraph shall survive expiration or termination of this Lease.
 - (2) If such damage or destruction is caused by the negligence or willful misconduct of City or any of its officials, officers, employees, agents, consultants, subconsultants, contractors, subcontractors, volunteers or invitees (other than the general public), then City shall repair, replace or rebuild the improvement within 120 days after such damage or destruction, and in such manner and according to such plans and specifications which would restore the Leased Premises, to substantially the same condition as immediately before its destruction or damage. Tenant waives any right to terminate the Lease under this Section 11(d) or California Civil Code sections 1932(2) or 1933(4). This paragraph shall survive expiration or termination of this Lease.
 - (3) If such damage or destruction is not subject to being repaired, replaced or rebuilt in accordance with either Section 11(d)(1) or Section 11(d)(2), above, then Tenant may elect to repair, replace or rebuild the improvement within 120 days after such damage or destruction, and in such manner and according to such plans and specifications which would restore the Leased Premises, to substantially the same condition as immediately before its destruction or damage by giving written notice to City within 90 business days of the damage or destruction. In the event that Tenant does not elect to so repair, replace or rebuild the improvement, or terminate this Lease in accordance with Section 11(d)(4), below, then City may terminate this Lease by giving written notice to Tenant. Except as provided in

Section 11(d)(4), below, Tenant waives any right to terminate the Lease under California Civil Code sections 1932(2) or 1933(4). This paragraph shall survive expiration or termination of this Lease.

(4) Except as provided in Sections 11(d)(1) and 11(d)(2) above, if the Leased Premises are damaged or destroyed to the extent of more than 25% of its insurable value during the last 10 years of the Initial Term following an extension of the Initial Term pursuant to Section 3(a) of this Lease, Tenant may elect, at Tenant's sole option and provided that Tenant is not otherwise in default, by giving written notice to City within 90 days of the damage or destruction to terminate this Lease. In the event Tenant elects to terminate hereunder, Tenant shall pay to City the full replacement value of the damaged or destroyed Leased Premises (including, without limitation, all insurance proceeds and deductibles associated therewith) other than that portion of the Old Museum Value allocable to Tenant under Section 11(c)(2)(ii) of this Lease (including subtraction of the "Sales Proceeds").

12. RIGHT OF ENTRY, IMPROVING PREMISES AND FLIGHT.

- (a) City, and City's representatives, shall have the right to enter the Leased Premises at any time during the Lease, to protect, inspect, exercise or investigate any rights of City herein reserved.
- (b) From time to time, City may, in its sole discretion, construct or cause to be constructed improvements to the Leased Premises.
- (c) City owns and operates the Fresno Yosemite International Airport ("Airport") on nearby property. There is reserved to the City, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said air space for landing at, taking off from or operation on the Airport. Tenant, its successors, and assigns, shall not erect or permit the erection of any structure, or permit the growth of any tree on the Leased Premises which would be an airport hazard within the standards established by the Federal Aviation Agency Technical Standard Order M-18, as amended. Tenant, its successors and assigns, shall not engage in or conduct or permit the conduct of any activity on the Leased Premises which will interfere in any manner with the operation of the Airport as an airport or with aircraft operations or related operations conducted on the airport by City or its lessees, and shall not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from said Airport, or otherwise constitute an airport hazard.

13. **LEGAL REQUIREMENTS.**

- (a) Tenant covenants and agrees, at Tenant's sole cost and expense, promptly to comply, and cause all of Tenant's representatives (including, without limitation, any of Tenant's subtenants, consultants, subconsultants, contractors, subcontractors, employees, officers, trustees, invitees, volunteers or agents) to comply, with all "Legal Requirements" defined herein to include each of the following:
 - (i) all applicable laws, statutes, ordinances, rules, regulations, requirements or orders of municipal, state, and federal authorities now in force

or that may later be in force, including, without limitation, those laws which relate to the payment of prevailing wages or the generation, use, storage, handling, treatment, transportation or disposal of Hazardous Substances or to health, safety, noise, environmental protection, air quality or water quality;

- (ii) the conditions of any permit, occupancy certificate, license or other approval issued by public officers relating to Tenant's activities, or Tenant's use or occupancy of the Leased Premises; and
- (iii) any liens, encumbrances, easements, covenants, conditions, restrictions and servitudes (if any) of record, or of which Tenant has notice, which may be applicable to the Leased Premises regardless of when they become effective, insofar as they relate to Tenant's activities or Tenant's use or occupancy of the Leased Premises.
- (b) The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether or not City is a party in such action or proceeding, that Tenant has violated any Legal Requirement relating to Tenant's activities and Tenant's use or occupancy of the Leased Premises, shall be conclusive of that fact as between City and Tenant.
- (c) Tenant shall furnish satisfactory evidence of compliance with the Legal Requirements upon request by City.

14. INDEMNIFICATION; RELEASE; AND SAFETY.

- Tenant shall, to the maximum extent permitted by law, indemnify, protect, defend and hold harmless City, its officials, officers, representatives, agents, employees, invitees, volunteers, transferees, successors and assigns (each an "Indemnitee" and collectively, "Indemnitees") from and against all claims, losses (including, but not limited to, diminution in value), actions in law or equity, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) of whatever kind or nature (collectively, "Claims"), which arise from or are in any way connected with Tenant's activities or any activities of Tenant's subtenant(s), or the entry on, occupancy or use of, the Leased Premises by Tenant or Tenant's representatives (including, without limitation, any of Tenant's subtenants, consultants, subconsultants, contractors, subcontractors, employees, officers, trustees, invitees, volunteers or agents) or the exercise by Tenant of Tenant's rights hereunder, or the performance of, or failure to perform, Tenant's duties under this Lease, including, but not limited to. Claims arising out of: (i) injury to or death of persons, including but not limited to employees of City or Tenant (and including, but not limited to, injury due to exposure to Potential Environmental Hazards in, on or about the Leased Premises); (ii) injury to property or other interest of City, Tenant or any third party; (iii) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all Legal Requirements relating to the environment and including any liability imposed by law or regulation without regard to fault.
- (b) Tenant acknowledges that all Claims arising out of or in any way connected with releases or discharges of a Hazardous Substance, or the exacerbation of a Potential Environmental Hazard, occurring as a result of or in connection with Tenant's use or occupancy of the Leased Premises, any use or occupancy of the Leased Premises by

Tenant's subtenant(s), Tenant's activities or the activities of any of Tenant's representatives (including, without limitation, any of Tenant's subtenants, consultants, subconsultants, contractors, subcontractors, employees, officers, trustees, invitees, volunteers or agents), and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of any Legal Requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.

- (c) Tenant's use and occupancy of the Leased Premises shall be at Tenant's sole risk and expense. Tenant accepts all risk relating to Tenant's occupancy and use of the Leased Premises. City shall not be liable to Tenant for, and Tenant hereby waives and releases City and the other Indemnitees from, any and all Claims resulting from or attributable to an occurrence on or about the Leased Premises related to Tenant's operations and activities. Tenant shall immediately notify City of any occurrence on the Leased Premises resulting in injury or death to any person or damage to property of any person.
- (d) Tenant shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless against claims, losses, costs (including attorneys' fees and costs), liabilities and damages resulting from the failure of Tenant, or any of Tenant's subtenants, consultants, subconsultants, contractors or subcontractors, to comply with any of the insurance requirements set forth in this Lease, including any referenced exhibit.
- (e) The provisions of this Section 14 shall survive the expiration or termination of this Lease.
- (f) The provisions of this Section 14 shall not apply to any Claims caused solely by the gross negligence, or caused by the willful misconduct, of any Indemnitees.
- 15. SURRENDER OF POSSESSION. It is mutually understood and agreed that upon expiration or earlier termination of the Lease, Tenant will surrender the Leased Premises to City in the same or better condition as on the Effective Date, ordinary wear and tear excepted. Tenant will also surrender to City all improvements constructed or placed upon the Leased Premises on or after the Effective Date in the same or better condition as on the date the respective improvement was either placed on the Leased Premises, or the construction completed, whichever is applicable; ordinary wear and tear excepted. All improvements constructed or placed upon the Leased Premises by Tenant prior to or after the Effective Date are the property of City (including, without limitation, the Deutsch Cactus Garden) at the time of placement or completion, whichever is applicable. Except for any encumbrances placed thereon by City, Tenant warrants that the Leased Premises and all such improvements are and shall remain and be free and clear of any and all liens, claims, demands and other encumbrances throughout the life of this Lease and when surrendered to City at the time of surrendering the Leased Premises. This warranty shall survive expiration or termination of this Lease.

16. ASSIGNMENT AND SURRENDER OF LEASE NOT A MERGER.

- (a) Except as expressly provided herein, Tenant shall not assign, transfer, hypothecate or mortgage this Lease, or any interest herein, or sublease the Leased Premises, or any part thereof, or any right or privilege pertaining thereto.
- (b) Tenant may sublease part or all of the Leased Premises pursuant to a sublease subject to the prior written consent of City which may be withheld for any reason. Tenant shall submit any sublease to City for its review and written consent at least 30 days in advance of the date in which the sublease is intended by the parties to go into effect. Any sublease shall not allow assignment, transfer, hypothecation, mortgage of the sublease, or any interest therein, without the prior written consent of City which may be withheld for any reason.
- (c) If City has consented to any sublease agreement, Tenant's voluntary or other surrender of this Lease, or the parties' mutual cancellation of it, will not merge the ownership and leasehold interests. At City's sole option, Tenant's surrender or any cancellation of the Lease will terminate any such agreement(s).
- (d) City's consent in one instance will not be a consent to any subsequent encumbrance, transfer, assignment, or subleasing without City's prior written consent. Any encumbrance, transfer, assignment or sublease entered into by Tenant (whether voluntary or involuntary, by operation of law or otherwise) without City's prior written consent which may be withheld for any reason, is void and, at City's option, will terminate this Lease.

17. **DEFAULT AND TERMINATION.**

- (a) Except as otherwise expressly provided in this Section 17, if either party materially defaults in the performance of any condition or covenant in this Lease, the other party may terminate this Lease upon written notice to the defaulting party, but only if the defaulting party fails to rectify said default within 60 days after written notice thereof is served upon defaulting party by the other party. In the event, however, that any default complained of hereunder is of such nature that the same cannot be rectified in such 60 days, then such default shall be deemed to be rectified if the defaulting party shall have commenced the compliance of the provisions hereof breached by it within such 60 day period and shall with all diligence prosecute the work or perform the particular provisions until the same shall have been fully rectified or performed.
- (b) For purposes of Section 17(a) above, the occurrence of any of the following events shall constitute a material default by Tenant:
- (1) The failure of Tenant or any of its subtenants, consultants, subconsultants, contractors or subcontractors to maintain the insurance required under this Lease.
- (2) Failure of Tenant to maintain the landscaping (lawns and trees) in accordance with the standards set forth in **Exhibit C**.
 - (3) Failure of Tenant to pay any rent to City when due.

- (4) Tenant becoming insolvent or the making by Tenant of any general arrangement or any assignment for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged bankrupt, unless in the case of a petition filed against Tenant the same is dismissed within 60 calendar days.
- (5) The abandonment, vacation or discontinuance of all Tenant facilities, operations, activities or services on the Leased Premises as required by this Lease for more than one month by Tenant.
- (6) The failure of Tenant to keep, perform and comply with any promises, covenants, conditions or terms set forth in this Lease.
- 18. **CHOICE OF LAW.** Subject to any provisions hereof, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Lease and rights and duties hereunder shall be Fresno County, California.
- 19. **NOTICES.** All notices, demands, consents or requests which may be or are required to be given by a party hereunder, shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Lease or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.
- 20. **ATTORNEY'S FEES.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Lease, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- 21. **THIRD PARTY BENEFICIARIES.** The rights, interests, duties and obligations defined within this Lease are intended for the specific parties hereto as identified in the preamble of this Lease. It is not intended that any rights or interests in this Lease benefit or flow to the interest of any third parties.

22. **GENERAL PROVISIONS**.

- (a) The section headings in this Lease are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Lease.
- (b) The provisions of this Lease are severable. The invalidity, or unenforceability of any one provision in this Lease shall not affect the other provisions.
- (c) The parties acknowledge that this Lease in its final form is the result of the combined efforts of the parties and that, should any provision of this Lease be found to be

ambiguous in any way, such ambiguity shall not be resolved by construing this Lease in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

- (d) Each exhibit and attachment referenced in this Lease is, by the reference, incorporated into and made a part of this Lease.
- (e) No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- (f) Subject to Section 16, above, once this Lease is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferee, agents, servants, employees and representatives.
- (g) The waiver by a party of a breach by another of any provision of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Lease. No provisions of this Lease may be waived unless in writing and signed by all parties to this Lease. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
- (h) Tenant is an independent contractor. This Lease is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association as between City and Tenant.

23. WASTE, NUISANCE, QUIET POSSESSION.

- (a) Tenant will not do any of the following: (i) commit or permit any waste on the Leased Premises, (ii) maintain, commit, or permit the maintenance or commission of any nuisance, as defined in California Civil Code section 3479, on the Leased Premises, (iii) use or permit use of the Leased Premises for any unlawful purpose, or (iv) maintain, commit, or permit any other act or condition which may disturb the quiet enjoyment of City or any other tenant of City adjacent to the Leased Premises.
- (b) Upon Tenant keeping, observing, and performing all of the covenants, conditions, promises and provisions on Tenant's part to be kept, observed or performed under this Lease, Tenant shall have quiet possession of the Leased Premises during the term hereof subject to all of the provisions of this Lease.
- 24. **MAINTENANCE OF RECORDS.** Records of Tenant pertaining to this Lease shall be maintained and kept in accordance with generally recognized accounting principles and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of this Lease and for a period of four years after expiration or termination of the Lease or, if longer, for the period of time required by law. In addition, all books, documents, papers, and records of Tenant pertaining to this Lease shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This section shall survive expiration or termination of this Lease.
- 25. **ENTIRETY-SUCCESSION.** This Lease and the Settlement and General Release Agreement, dated May 26, 2011, merges and supersedes all prior negotiations, representations, agreements (including, without limitation, the 1991 Lease), and constitutes

the entire agreement concerning City's leasing of the Leased Premises to Tenant and the consideration therefore. This Lease may be modified only by written instrument duly authorized and executed by both Tenant and City.

26. **CONDITION PRECEDENT.** The following is a condition precedent to the effectiveness of this Lease. This condition must be satisfied prior to or simultaneously with entry into this Lease or this Lease will be void and of no effect.

Condition Precedent - Execution of the Settlement and General Release Agreement

111

111

111

City and Tenant have fully executed the Settlement and General Release Agreement for the dismissal of Fresno Superior Court Case No. 07CECG01491 in the matter of the City of Fresno v. The Discovery Center and such Settlement and General Release Agreement is in full force and effect as evidenced by the satisfaction of all conditions precedent contained therein.

- 19 -

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their authorized representatives in Fresno, California as of the date first above written.

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City of Fresno.

a California municipal corporation

By

Bruce Rudd, Assistant City Manager
Office of the City Manager

Tenant:

The Discovery Center,

a California nonprofit corporation

Gary L, Pigg, President

Mary Ellen Wright, Executive Director

(Attach certificate of acknowledgment)

(Attach certificate of acknowledgment)

Attest:

Rebecca E. Klisch

City Clerk

Deputy Bruer

Approved as to form: James C. Sanchez

City Attorney

By

Nancy A. Algier

Date

Senior Deputy

Addresses:

Attention: Contract Administrator City of Fresno Department of Parks, Recreation & Community Services Dickey Youth Development Center

1515 E. Divisadero St. Fresno, CA 93721

Telephone: (559) 621-2900

The Discovery Center Board of Trustees

Attention: Gary L. Pigg, President

1937 N. Winery Avenue Fresno, CA 93703

Telephone:

(559) 251-5533

FAX:

(559) 251-5531

Attachments:

Exhibit A – Map/Legal Description of Property

Exhibit A-1 – Legal Description of Leased Premises

Exhibit B - Site Improvements

Exhibit C - City Maintenance Standards

Exhibit D - Annual Report Form

Exhibit E – Insurance Requirements

Exhibit F – Contractor Requirements Related to Tenant Improvements

Exhibit A

(Cover Sheet of 2-page Exhibit)

Legal Description and Map - Property of City known as Reedy Park

DISCOVERY CENTER LEGAL DESCRIPTION

That portion of the Southwest quarter of Section 30, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, more particularly described as follows:

COMMENCING at the South quarter corner of said Section 30; thence North 89°57′50″ West, along the South line of Section 30, a distance of 1332.04 feet to the Southwest corner of the East half of the Southwest quarter of Section 30; thence North 00°00′10″ East, along the West line of the East half of the Southwest quarter of Section 30, a distance of 1205.00 feet; thence South 89°57′50″ East, along a line which is parallel with and 1205.00 feet North of the South line of Section 30, a distance of 50.00 feet to the TRUE POINT OF BEGINNING; thence South 00°00′10″ West, along a line which is parallel with and 50.00 feet East of the West line of the East one half of the Southwest quarter of Section 30, a distance of 846.24 feet; thence South 89°57′50″ East, along a line which is parallel with and 358.76 feet North of the South line of said Section 30, a distance of 290.00 feet; thence North 00°00′10″ East a distance of 846.24 feet; thence North 89°57′50″ West a distance of 290.00 feet to the TRUE POINT OF BEGINNING.

Contains:

5.63 Acres ±

245,410 sq.ft. ±

Reference Drawing No. 25-AA-134

CINLEGALNDISCOVER 8/30/93

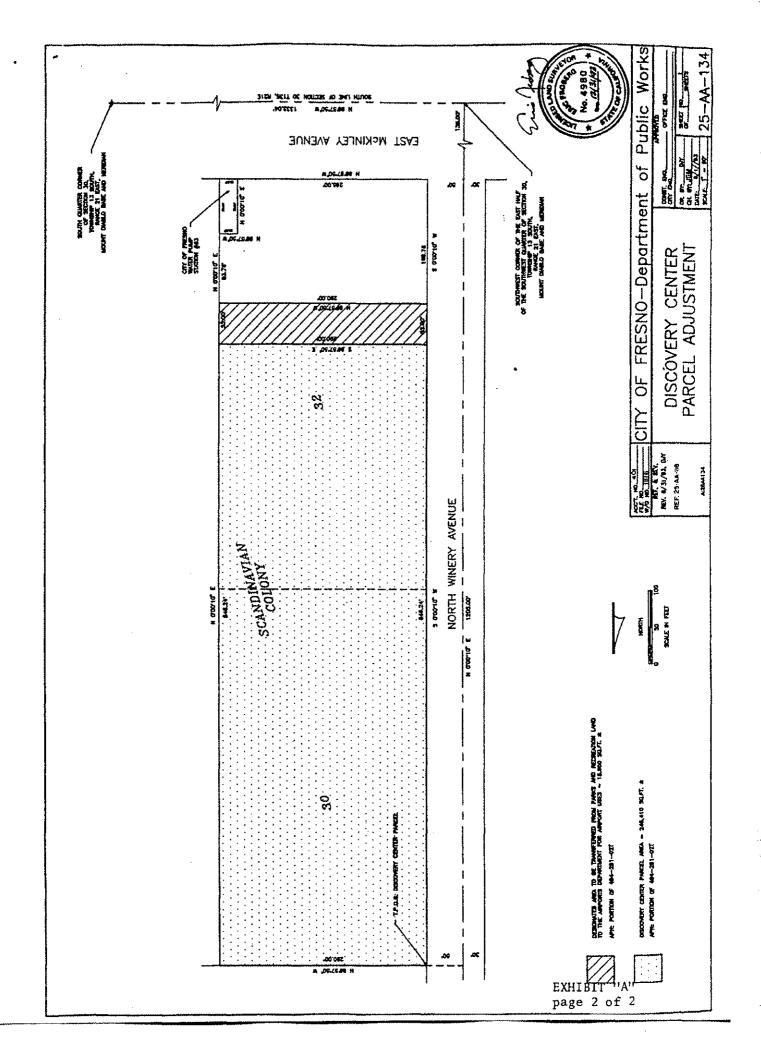


Exhibit A-1 (Cover Sheet of 2-page Exhibit)

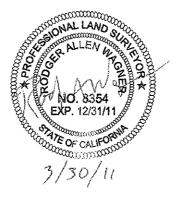
Legal Description - Leased Premises of Discovery Center

EXHIBIT "A-1" Page 1 of 2

A portion of the east half of the southwest quarter of Section 30, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, more particularly described as follows:

COMMENCING at the southwest corner of said Section 30; thence S 89°57'11" E. along the south line of said southwest quarter of Section 30, a distance of 1332.08 feet to the southwest corner of said east half of the southwest quarter of Section 30; thence N 0°00'10" E, along the west line of said east half, a distance of 1205.00 feet; thence S 89°57'11" E, parallel with and 1205.00 feet north of the south line of said southwest quarter, a distance of 50.00 feet to the TRUE POINT OF BEGINNING of this description; thence continuing S 89°57'11" E, parallel with and 1205.00 feet north of the south line of said southwest quarter, a distance of 290.00 feet; thence S 0°00'10" W, parallel with the west line of said east half, a distance of 778.24 feet; thence N 89°57'11" W, parallel with the south line of said southwest quarter, a distance of 53.60 feet; thence N 6°17'35" W, a distance of 85.81 feet to the beginning of a tangent curve concave southwesterly and having a radius of 75.00 feet; thence northwesterly. along the arc of said curve, through a central angle of 83°39'36", an arc distance of 109.51 feet; thence N 89°57'11" W, tangent to last said curve and parallel with the south line of said southwest quarter, a distance of 152.50 feet to the east right-of-way line of that portion of North Winery Avenue previously dedicated for public street purposes by City Resolution No. 68-301 recorded November 14, 1968 in Book 5634 at Page 43, Official Records of Fresno County; thence N 0°00'10" E, along said east right-of-way line, parallel with and 50.00 feet east of the west line of said east half, a distance of 626.24 feet to the TRUE POINT OF BEGINNING.

Contains an area of 4.407 acres, more or less.



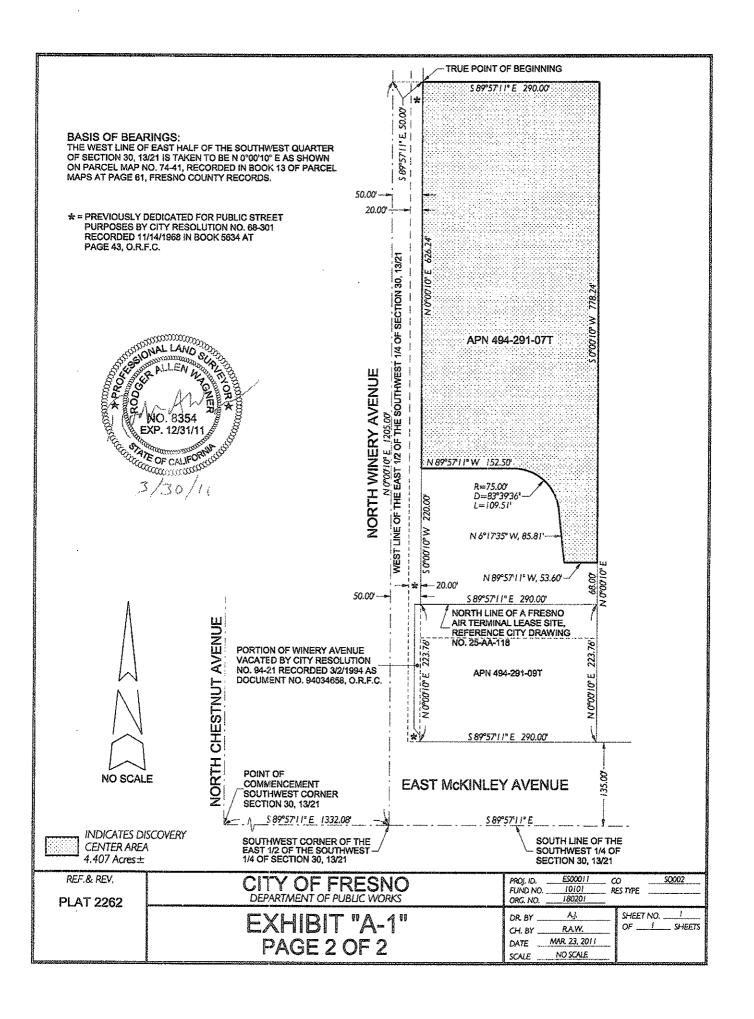
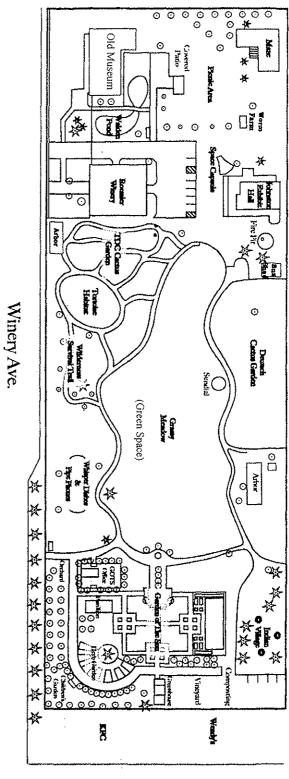


Exhibit B (Cover Sheet of 1-page Exhibit)

Site Improvements to Property (Reedy Park)

"Property"
1944, 1936, and 1750 N. Winery
Fresno CA 93703



McKinley

Exhibit C (Cover Sheet of 3-page Exhibit)

City Maintenance Standards

PARKS MAINTENANCE STANDARDS REEDY PARK (DISCOVERY CENTER)

Lawns	Standard Description	Measure	
Cleanliness	Turf is free of litter Turf is free of organic debris	< 5 pieces of litter in a 25'x25' area	
Color	% of Turf Area Green	80%	
Drainage	% of Turf Area free of standing water	80%	
Edged	Edges clearly defined: less than 1" of growth over adjoining landscape	1"	
Height	Uniform height of less than:	3.5"	

Trees	Standard Description	Measure
Limbs	# of hanging limbs visible	< 5
Plant Haalth	% trees alive	80%
Plant Health	% trees free from damage	80%

Exhibit C PARKS MAINTENANCE STANDARDS REEDY PARK (DISCOVERY CENTER)

Restrooms	Standard Description	Measure
Cleanliness	% Free of litter, debris and waste	<3 pieces of litter are visible on the floor
Graffiti	% Free of Graffiti	80%
Functionality of Structure	% toilets, urinals, partitions, water faucets and drains operational	80%
Lighting	% lights operational	80%
Painting	% uniform coat and not peeling	80%
Signage	# legible and properly installed	80%
Supply Inventory	% stocked with toilet paper, blowers	80%
Waste Receptacles	% Clean and not overflowing	80%
Tot Lots	Standard Description	Measure
Cleanliness	Play area free of litter and debris	< 5 pieces of litter in a 25'x25' area
Graffiti	% Free of Graffiti	80%
Functionality	% of play equipment present and functional	80%

PARKS MAINTENANCE STANDARDS REEDY PARK (DISCOVERY CENTER)

Shelter Maintenance & Picnic Areas Standard Description		Measure
Cleanliness	% of benches, table and grills free of litter, and dirt.	80%
Graffiti	% benches, tables and grills free of graffiti	80%
Painting	% of benches, table and grills free of peeling or chipped paint.	80%
Functionality of Equipment	% of benches and tables structurally sound, properly anchored and free of sharp edges. Grills are operational	80%

Exhibit D (Cover Sheet of 5-page Exhibit)

Annual Report Form

EXHIBIT D FY 20XX/20XX

Show Approved Budget or Organization by Category Attach current IRS Form 990. NAME OF ORGANIZATION: The Discovery Center

BUDGET SUMMARY

LINE	BUDGET CATEGORIES	ACCT NO.	COLUMN A
	Salaries & Benefits		
1.	Personnel Salaries	0100	
2.	Employee Benefits	0150	
3.	Subtotal		
	Service & Supplies		
4.	Insurance	0200	
5.	Communications	0250	
6.	Consultant Services	0300	
7.	Office Expense	0350	
8.	Office Rental	0400	
9.	Equipment Rental	0450	
10.	Utilities	0500	
11.	Travel	0550	
12.	Food Supplies	0600	
13.	Contracts	0650	
14.	Transportation	0700	
15.	Accounting Department Allocation	0750	
16.	Executive Management Allocation	0800	
17.	Uniforms	0850	
18.	Repairs and Maintenance	0900	
19.	Subtotal		
20.	TOTAL		
	Each Additional Costs		

PERSONNEL AND EMPLOYEE BENEFITS

Personnel Detail: Please round off cents to the nearest dollar.

NAME OF ORGANIZATION: The Discovery Center

Position and/or Title	Funding Source(s)	Number of Persons	% of Time	# of Months	Monthly Salary	TOTAL COST
то	 TAL PERSO	NNEL SALAR	RIES			

EMPLOYEE BENEFITS:

	List each benefit and approximate cost for each one. Example: Health Insurance: 1 employee @ \$268 per month per employee = \$3,216.00			
1.	Health Insurance:			
2.	Federal Payroll Taxes:	FICA 12.4% of total salaries Medicare 2.9% of total salaries	= \$ = \$	
3.	State Payroll Taxes:	SDI .8% of total salaries SUI 3.4% of total salaries ETT .1% of total salaries	= \$ = \$ = \$	
		TOTAL EMPLOYE	E BENEFITS	2. \$

SUBTOTAL (Personnel Salaries and Benefits)	3. \$
	· · · · · · · · · · · · · · · · · · ·

BUDGET DETAIL

NAME OF ORGANIZATION: The Discovery Center

Account Title	Category Descriptions	Subtotal	Total
0200	Liability Insurance Workers Comp Vehicle Insurance Total Insurance	\$ \$ \$	\$
0250	Communications (itemize & @ \$ per month)		
	Total Communications		\$
	Accounting Department Allocation (description)		
	Total Accounting Department Allocation		\$
	Executive Management Allocation (description)		
	Total Executive Management Allocation		\$
	Uniforms @ \$per person per year.		\$
	Total Uniforms		

EXHIBIT D Page 4 of 5

TOTAL BUDGET FOR THIS PROGRAM BY INCOME SOURCE

	DOLLEOL	/ 1 1117	JGKAWI BY	INCOMES	,	,
CATEGORY	Source of	Source of	Source of	Source of	Source of	TOTAL
	Income	Income	Income	Income	Income	
SALARIES & BENEFITS	<u>"A"</u>	"B"	<u>"C"</u>	<u>"D"</u>	<u>"E"</u>	
SALAKIES & DEIVERTIE						
Personnel & Salaries	\$					\$
Employee Benefits	\$					\$
SUBTOTAL		***************************************				
SERVICE & SUPPLIES Insurance & Workers' Comp. Communications						
Consultant Services						
Office Expense						
Office Rental						
Equipment Rental						
Utilities						
Travel (Admin.)						
Food Supplies						
Contracts						
Transportation						
Acctg. Dept. Allocation						
CEO. Mgmt. Allocation						
Uniforms						
Repairs & Maintenance						
SUBTOTAL						
TOTALS						

EXHIBIT D Page 5 of 5

<u>FUNDING PERIOD:</u>			
FROM:	THROUGH:		
	-		

Exhibit E (Cover Sheet of 3-page Exhibit)

Insurance Requirements

Exhibit E

Insurance Requirements Lease between City of Fresno ("City") and The Discovery Center ("Tenant")

The term "Tenant" herein shall mean and refer to Tenant and any of Tenant's subtenants, consultants, subconsultants, contractors and subcontractors; unless the language expressly limits the requirement to carry the insurance coverage to "Tenant" or to "Tenant and any subtenant" under "Minimum Scope of Insurance," below, by either the respective phrase "required only of Tenant" or "required only of Tenant and any subtenant."

Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, damage to rented premises and contractual liability (including, without limitation, indemnity obligations under the Lease). [Coverage for damage to rented premises is required only of Tenant and any subtenant.]
- 2. If alcoholic beverages are to be sold, served or furnished, COMMERCIAL GENERAL LIABILITY insurance shall be endorsed to include coverage for liquor liability with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage, or Tenant shall pay for and maintain the most current version of Insurance Services Office (ISO) Liquor Liability Coverage Form CG 00 33, which shall include insurance for "bodily injury," and "property damage" with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage. [Liquor Liability insurance is required only of Tenant and any subtenant. The responsibility for Liquor Liability insurance may be assigned to Tenant or any subtenant's caterer, concessionaire or vendor.]
- 3. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, scheduled, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). [Required only in the event Tenant drives or uses any motor vehicle on the Leased Premises.]
- 4. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.
- 5. COMMERCIAL PROPERTY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Commercial Page 1 of 3

Property Form CP 10 30 (Cause of Loss – Special Form), with limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of all structures, buildings and improvements on the Leased Premises with no coinsurance penalty provisions. [Commercial Property Insurance is required only of Tenant.]

Minimum Limits of Insurance

Tenant shall maintain limits of liability of not less than:

- 1. General Liability:
 - \$1,000,000 per occurrence for bodily injury and property damage, including liquor liability
 - \$1,000,000 per occurrence for damage to rented premises
 - \$1,000,000 per occurrence for personal and advertising injury
 - \$2,000,000 aggregate for products and completed operations
 - \$2,000,000 general aggregate (applying separately to the work performed when provided by consultant, subconsultant, contractor or subcontractor of Tenant or subtenant)
- 2. Automobile Liability:
- \$1,000,000 per accident for bodily injury and property damage
 - 3. Employer's Liability:
 - \$1,000,000 each accident for bodily injury
 - \$1,000,000 disease each employee
 - \$1,000,000 disease policy limit

Umbrella or Excess Insurance

In the event Tenant purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

Tenant shall be responsible for payment of any deductibles contained in any insurance polices required hereunder and Tenant shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents, invitees and volunteers; or (ii) Tenant shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability, Liquor Liability (if applicable) and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

- 1. City, its officers, officials, employees, agents, invitees and volunteers are to be covered as additional insureds.
- 2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, invitees and volunteers.
- 3. Tenant's insurance coverage shall be primary and no contribution shall be required of City.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Tenant and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents, invitees and volunteers.

The Commercial Property insurance policy is to contain, or be endorsed to contain the following provision: The City shall be named as a loss payee.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Tenant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Tenant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or (ii) authorized by City of Fresno's Risk Manager.

Verification of Coverage

Tenant shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Lease and before work commences.

Exhibit F
(Cover Sheet of 5-page Exhibit)

Contractor Requirements Related to Tenant Improvements

Exhibit F

Contractor Requirements Related to Tenant Improvements Lease between City of Fresno and The Discovery Center

THIRD PARTY BENEFICIARY [Not required for a contract for a Minor Repair or Improvement]

While the Contractor does not have direct contractual privity with the City of Fresno, as the landlord of the Discovery Center and owner of the property and any improvements thereon, the Discovery Center and Contractor agree that the City of Fresno is a third-party beneficiary and neither this paragraph (nor any other provision of this Contract necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the City of Fresno.

CONTRACT CHANGE ORDERS [Not required for a contract for a Minor Repair or Improvement]

No change order will be issued without the prior written approval from the City of Fresno which affects the work plan for the project, would affect the size or capacity of any project component, cause a significant change in the location of any project component, affect the duration of the project, alter materials used in the project, affect the indemnification or insurance requirements required to be contained below, or affects any City of Fresno - approved green or solar energy system component(s) of the project.

INDEMNIFICATION

- (1) To the furthest extent allowed by law including California Civil Code Section 2782, Contractor shall indemnify, hold harmless and defend the City of Fresno and each of its officers, officials, employees, agents, invitees and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City of Fresno, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether the City of Fresno or any of its officers, officials, employees, agents, invitees or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of the City of Fresno or any of its officers, officials, employees, agents, invitees or volunteers.
- (2) Contractor shall defend suits or claims for infringement of patent rights and shall defend and hold the City of Fresno harmless from loss on account thereof.
- (3) If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall require each subcontractor to

indemnify, hold harmless and defend the City of Fresno and each of its officers, officials, employees, agents, invitees and volunteers in accordance with the terms of the preceding paragraphs.

- (4) Notwithstanding the foregoing paragraphs (1) and (2), Contractor or any subcontractor who is a "design professional" as defined in Section 2782.8 of the California Civil Code and to the extent performing work hereunder in the capacity of a "design professional" shall, in lieu of paragraphs (1) and (2), above, shall indemnify, hold harmless and defend the City of Fresno and each of its officers, officials, employees, agents, invitees and volunteers to the furthest extent allowed by law, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Contract.
- (5) These paragraphs (1) through (5) shall survive termination or expiration of this Contract.

INSURANCE

Throughout the life of this Contract, Contractor shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by City of Fresno's Risk Manager. The following policies of insurance are required:

- (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:
 - \$1,000,000 per occurrence for bodily injury and property damage
 - \$1,000,000 per occurrence for personal and advertising injury
 - \$2,000,000 aggregate for products and completed operations
 - \$2,000,000 general aggregate applying separately to the work performed under the Contract
- (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, scheduled, hired, and non-owned automobiles or other licensed vehicles

- (Code 1 Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.
- (iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.
- (iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.
- (v) BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. (Only required if the project includes new construction of a building; or renovation of, or addition to, an existing building.) (Applicable only to those responsible for the construction, alteration or renovation.)
- (vi) Professional Liability (Errors and Omissions) insurance appropriate to the respective person's profession (applicable only to those who are performing work hereunder in the capacity of a "design professional" as defined in Section 2782.8 of the California Civil Code). The limits of liability shall be no less than \$1,000,000 per claim/occurrence and \$2,000,000 policy aggregate. Coverage shall be endorsed to include contractual liability. If the policy is written on a claims-made form:
 - The "Retro Date" must be shown, and must be before the effective date of the Contract or the commencement of work.
 - Insurance must be maintained and evidence of insurance must be provided for at least 5 years after any expiration or termination of the Contract or, in the alternative, the policy shall be endorsed to provide not less than a 5-year discovery period.
 - If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the respective effective date of the Contract or commencement of work, must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Contract.
 - A copy of the claims reporting requirements must be submitted to the City of Fresno for review.
 - These requirements shall survive expiration or termination of the Contract.

In the event Contractor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Contractor shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Contractor shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City of Fresno's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Fresno, its officers, officials, employees, agents, invitees and volunteers; or (ii) Contractor shall provide a financial guarantee, satisfactory to City of Fresno's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City of Fresno be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to the City of Fresno. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Contractor shall furnish the City of Fresno with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for the Discovery Center, Contractor shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the City of Fresno, its officers, officials, agents, employees, invitees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Contractor's insurance shall be primary and no contribution shall be required of the City of Fresno. The coverage shall contain no special limitations on the scope of protection afforded to the City of Fresno, its officers, officials, employees, agents, invitees and volunteers. The Builders Risk (Course of Construction) insurance policy shall be endorsed to name the City of Fresno as a named insured. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to the City of Fresno, its officers, officials, agents, employees, invitees and volunteers.

Contractor shall furnish the City of Fresno with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City of Fresno's Risk Manager or his/her designee before work commences. Upon request of the City of Fresno, Contractor shall immediately furnish the City of Fresno with a complete copy of any insurance policy required under this Contract, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Contract.

If at any time during the life of the Contract or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Contract shall be discontinued immediately, and all payments due or that become due to Contractor shall be withheld until notice is received by the City of Fresno that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City of Fresno. Any failure to maintain the required insurance shall be sufficient cause for the Discovery Center to terminate this Contract. No action taken by the Discovery Center or the City of Fresno hereunder shall in any way relieve Contractor of its responsibilities under this Contract.

The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Contract. The duty to indemnify the City of Fresno shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, agents, employees, persons under the supervision of Contractor, vendors, suppliers, invitees, volunteers, consultants, subconsultants, subcontractors, or anyone employed directly or indirectly by any of them.

In the event of a partial or total destruction by the perils insured against of any or all of the work and/or materials herein provided for at any time prior to the final completion of the Contract and the final acceptance by the Discovery Center of the work or materials to be performed or supplied thereunder, the Contractor shall promptly reconstruct, repair, replace, or restore all work or materials so destroyed or injured at his/her sole cost and expense. Nothing herein provided for shall in any way excuse the Contractor or his/her insurance company from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Contract.

If Contractor should subcontract all or any portion of the services to be performed under this Contract, Contractor shall require each subcontractor to provide insurance protection in favor of the City of Fresno, its officers, officials, employees, agents, invitees and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Contractor and the City of Fresno prior to the commencement of any work by the subcontractor.

Waiver of Subrogation: Contractor and its insurers hereby waive all rights of recovery against the City of Fresno and its officers, officials, employees, agents, invitees and volunteers, on account of injury, loss by or damage to the Contractor or any of its principals, officers, employees, agents, consultants, subconsultants, contractors, subcontractors, vendors, suppliers, invitees or volunteers, or its property or the property of others under its care, custody and control. Contractor shall give notice to its insurers that this waiver of subrogation is contained in this Contract. This requirement shall survive termination or expiration of this Contract.

Contractor's Volunteers: In the event Contractor utilizes any volunteers in the performance of the work, Contractor shall ensure that there is sufficient insurance coverage for work performed by its volunteers.



AGENDA ITEM NO. 9:00am D

COUNCIL MEETING 6/16/2011

APPROVED BY

City Manager

June 16, 2011

FROM:

BRUCE A. RUDD, Assistant City Manager

SUBJECT:

APPROVE A FIVE YEAR LEASE AGREEMENT, WITH AN AUTOMATIC 40-YEAR EXTENSION UPON SATISFACTORY COMPLETION OF LEASE TERMS, WITH THE DISCOVERY CENTER, A NON-PROFIT ORGANIZATION, FOR OPERATION OF THE

DISCOVERY CENTER, LOCATED AT 1937 N. WINERY AVENUE

RECOMMENDATION

Staff recommends that Council approve a five year lease agreement with the Discovery Center, to operate and maintain the Discovery Center. The lease terms and conditions are consistent and within the parameters set by City Council in Closed Session on February 10, 2011.

EXECUTIVE SUMMARY

The Discovery Center (the Center), located at 1937 N. Winery, has been a staple of the Fresno community for generations. The City of Fresno and the Center originally entered into a 30-year lease agreement in April 1961. In May, 2000 one of the main buildings used by the Center was destroyed by fire resulting in the Center receiving \$113,000 in insurance proceeds. The subsequent use of these proceeds by the Center has been the heart of a dispute between the City and the Center for more than six years.

The proposed lease agreement would resolve all issues related to this dispute and would provide the Center with a new, five year lease, with an automatic 40-year extension upon fulfillment of lease terms, including the reconstruction of the damaged building. During the term of the lease, the Center will also assume all the costs of maintaining Reedy Park, except for the portion of the property currently occupied by the Garden of the Sun. The value of maintaining Reedy Park, including utilities, is estimated to be \$5,500 annually.

BACKGROUND

The Discovery Center is located on a parcel of property known as Reedy Park. Reedy Park and was gifted to the citizens of Fresno for the purpose of providing an educational facility in the natural and physical sciences. The property was originally occupied in 1961 by the Fresno Museum. The Fresno Museum changed its name to the Discovery Center in 1991.

For the last 50 years, the Center has been providing classes, interactive programs and a location where the citizens of Fresno, as well as the outlying communities, can participate in and enjoy the natural and physical sciences. The Center serves over 25,000 children annually with educational classes, camps, birthday parties and special events in their unique "urban wildlife park" within City limits.

In May, 2001, the main building used by the Discovery Center was destroyed by fire. The insurance proceeds from the fire were used to purchase property across the street rather than to repair the damaged building. For more than six years the City and the Discovery Center have been engaged in a series of negotiations in effort to resolve this matter. Previous proposals and potential settlements have been discussed with Council in Closed Session on April 12, 2005, December 13, 2005, January 30, 2007, May 1, 2007, April 29, 2008, June 24, 2010, and February 10, 2011, respectively.

Presented to City Council.

Date 6/16/11
Disposition approved

The terms and conditions of this new lease is consistent with those discussed with Council on February 10, 2011, and would serve as a resolution of this matter. The Trustees of the Center have already approved the following settlement proposal, subject to Council's approval:

- The Center will convey a 50% undivided interest in the 1937 Property to the City.
- The parties will immediately list the 1937 Property for sale. The Center and the City will agree on a minimum sales price, based on recent comparable sales data. The parties will sell the 1937 Property for at least the minimum sales price as soon as a valid offer is received.
- Once the property is sold the proceeds (net commission and other related expenses) will be held in a joint escrow account, to be used only for the repair of the burned building and Reedy Park.
- The Center will repair the burned out building following the sale of the 1937 Property. The City will cooperate with the Discovery Center in the City's permit process in order to expedite needed repairs. In the interim, the City will also permit the Discovery Center to place standards temporarily trailers in Reedy Park that shall serve as temporary office space during the time of construction.
- The initial term of the lease is five years, with an optional 40 year extension, predicated on the completion of building repairs within the first five years.
- If the Center has not completed the repairs during this period, the Center will vacate the property and any remaining funds in the escrow account will revert to the City.
- The Center will assume all maintenance and utility obligations for Reedy Park and pay a nominal rent of \$50 annually.
- The City will be named as additional insured for property and liability insurance
- The Center will maintain Reedy Park for non-profit educational and museum purposes. However, no
 restrictions will be placed on fund raising efforts that may be needed to augment the reconstruction of
 the damaged building.
- No fee shall be collected to access the current green space during the Center's operating hours.
- City's involvement in the Center's maintenance and improvements shall be consistent with that of a private landlord under the terms of a ground lease.
- The City will enter into a separate lease with the Garden of the Sun, with separated metered utilities for GOS.
- The City will dismiss pending legal action against the Center upon the execution of the lease.

FISCAL IMPACT

The value of rent and maintenance of structures and green space saves the PARCS Department, at a minimum, \$5,550 annually.

Attachment: Agreement